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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Recommendations made by the Special Representative of the Secretary-General for human rights in Cambodia on matters within his mandate

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 1993/6 of 19 February 1993, the Commission on Human Rights requested the Secretary-General to appoint a Special Representative on Human Rights in Cambodia, to undertake the following tasks:

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights.

In the resolution, the Commission on Human Rights also requested the Secretary-General to establish an operational presence of the Centre for Human Rights in Cambodia after the expiry of the mandate of the United Nations Transitional Authority in Cambodia (UNTAC). Accordingly, the Centre for Human Rights established an office in Cambodia on 1 October 1993. A report on the activities of the Centre for Human Rights in Cambodia will be submitted to the General Assembly at its fifty-first session.

2. On 23 November 1993, the Secretary-General appointed Michael Kirby as his Special Representative. Pursuant to the requests of the Commission on Human Rights and of the General Assembly, the Special Representative has reported successively to the General Assembly at its forty-ninth session (A/49/635) and fiftieth session (A/50/681), and to the Commission on Human Rights at its fiftieth to fifty-second sessions, 1/ based on information gathered through seven missions to Cambodia. All reports prepared by the Special Representative were submitted to the Government of Cambodia for comments before publication and reactions received were either integrated in the report or published as an addendum.

3. Following his appointment in early 1996 to the High Court of Australia, Mr. Kirby resigned from his position as Special Representative in 1996. The Secretary-General appointed Mr. Thomas Hammarberg as his new Special Representative on Human Rights in Cambodia. The appointment of Mr. Hammarberg was communicated to the interim Head of State and the Government of Cambodia by the United Nations High Commissioner for Human Rights during his mission to Cambodia from 27 February to 2 March 1996. Mr. Hammarberg, who is currently Ambassador and Special Adviser on Humanitarian Issues to the Government of Sweden and a member of the United Nations Committee on the Rights of the Child, took up his functions on 1 May 1996.

4. In its resolution 50/178 of 22 December 1995, entitled "Situation of human rights in Cambodia", the General Assembly took note with appreciation of the report of the Special Representative, and endorsed his recommendations and conclusions, including those aimed at ensuring the independence of the judiciary and the establishment of the rule of law, good governance, freedom of expression and the promotion of an effective functioning multi-party democracy.

5. Noting that commune elections were due to be held in 1996 or 1997 and National Assembly elections in 1998, the General Assembly urged the Government of Cambodia to promote and uphold the effective functioning of multi-party democracy, including the right to form political parties, stand for election, take part freely in a representative government and freedom of expression, in accordance with the principles set out in paragraphs 3 and 4 of annex 5 to the Agreement signed in Paris on 23 October 1991.

6. The General Assembly expressed grave concern about the serious violations of human rights as detailed by the Special Representative in his report, and called upon the Government of Cambodia to prosecute, in accordance with due process of law and international standards relating to human rights, all those who had perpetrated human rights violations. The Assembly expressed particularly grave concern at the comments made by the Special Representative concerning the reluctance of the courts to charge members of the military and other security forces for serious criminal offence, and encouraged the Government of Cambodia to address the problem, which in effect, placed persons in authority above the principle of equality before the law.

7. The General Assembly also expressed grave concern at the devastating consequences and destabilizing effects of the indiscriminate use of anti-personnel landmines on Cambodian society, encouraged the Government of Cambodia to continue its support and efforts for the removal of those mines, and welcomed the intention of the Government of Cambodia to ban all anti-personnel landmines.

8. The General Assembly requested the Secretary-General to report to it at its fifty-first session on the recommendations made by the Special Representative on matters within his mandate and decided to continue its consideration of the situation of human rights in Cambodia at its fifty-first session.

9. Following the adoption of resolution 50/178 by the General Assembly, the Commission on Human Rights held its fifty-second session in March-April 1996, to which the Special Representative submitted a report 2/ based on his seventh mission to Cambodia in January 1996. The Commission adopted resolution 1996/54, in which it commended the work of Mr. Kirby in promoting and protecting human rights in Cambodia and welcomed the appointment of Mr. Hammarberg as the new Special Representative of the Secretary-General. The Commission requested the Secretary-General, through his Special Representative, in collaboration with the Centre for Human Rights, to assist the Government in ensuring the protection of the human rights of all people in Cambodia.

10. In addition to confirming the concerns expressed by the General Assembly, the Commission welcomed the efforts made by the Government of Cambodia to promote and protect human rights, in particular in the area of human rights education and the essential area of creating a functioning system of justice, urged that efforts continue in this area, and encouraged the Government to improve the conditions of prisons.

11. The Commission also called upon the Government to investigate cases of violence and intimidation directed against political parties and their

supporters, as well as against media personnel and offices, and to bring to justice those responsible.

12. Recognizing the seriousness with which the Government of Cambodia has approached the preparation of its initial reports to the relevant treaty bodies, the Commission encouraged the Government to continue its efforts to meet its reporting obligations under international human rights instruments, drawing on the assistance of the Office in Cambodia of the Centre for Human Rights.

13. The present report is submitted in accordance with the request made to the Special Representative in resolution 50/178 and is based on the first mission to Cambodia conducted by the new Special Representative, Mr. Thomas Hammarberg.

II. MISSION TO CAMBODIA OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL (25 JUNE-6 JULY 1996)

14. The new Special Representative undertook his first mission to Cambodia from 25 June to 6 July. He was generously received by the First Prime Minister, His Royal Highness Samdech-Krom Preah Norodom Ranariddh, and the Second Prime Minister, Samdech Hun Sen, and held long and constructive discussions with both of them. He also had positive meetings with the Foreign Minister, Ung Huot, and with the Secretary of State in the Ministry of Justice, Uk Vithun.

15. In the National Assembly the Special Representative met the Chairman, Kem Sokha, and other members of the parliamentary Commission on Human Rights and Reception of Complaints and was informed about plans to strengthen the capacity of the Commission to make its own independent investigations into allegations of human rights violations.

16. The Special Representative visited Siem Reap Province in order to study on site the painstaking efforts of demining and to hold discussions with official and non-governmental representatives, including spokespersons of political parties and the military police. He paid visits to three provincial courts, the Court of Appeal and the Supreme Court in order to discuss issues relating to the administration of justice with judges, prosecutors and other court staff. In Ta Kmau in Kandal Province he visited the provincial prison and discussed conditions of detention with the prison administration. Furthermore, he attended a training course for the police on human rights organized by the non-governmental organization Vigilance.

17. The Special Representative met with the inter-ministerial subcommittees that are drafting the reports to be submitted by Cambodia under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination Against Women.

18. As this was his first official visit to the country, the Special Representative was keen to learn and receive as much information as possible. Beside the talks with governmental, parliamentary and judicial representatives, he met with the Venerable Maha Gossananda for an exchange on Buddhism and human rights. He also held consultations with non-governmental organizations on human

rights monitoring and education, the rights of the child, the issue of anti-personnel mines and the freedom of expression. He met with representatives of Cambodian journalists' organizations to discuss issues related to freedom of expression and their own efforts to define ethical standards for their profession. Discussions were also held with diplomatic representatives in Phnom Penh, including the Ambassadors of Australia, China, Indonesia, Malaysia, the Philippines, Singapore, Thailand, the United States of America and States members of the European Union (EU). The Special Representative also sought advice from the representatives of United Nations organs and agencies, including the Secretary-General's Representative in Cambodia and the United Nations Coordinator and Resident Representative of the United Nations Development Programme (UNDP), as well as heads of the Cambodia offices of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Volunteers (UNV) and the World Food Programme (WFP). Information and ... were also provided by the International Organization for Migration (IOM), the International Committee of the Red Cross (ICRC) and Save the Children (UK and Norway). All these consultations were informative and most useful to the Special Representative who expressed his sincere gratitude for the assistance he received during the meetings.

19. The complete programme of the mission is appended as annex I.

20. During his mission, the Special Representative selected four areas for particular attention: the rights of the child, with a focus on child trafficking and prostitution; effective measures for the protection of the individual against landmines; issues relating to the independence of the judiciary and the administration of justice; and, finally, some specific problems in relation to the preparation of the forthcoming elections, including guarantees for freedom of expression. Other important human rights issues will be added to the programme for future missions by the Special Representative. The present report was finalized in draft form shortly after the mission and is factually correct as of mid-July 1996. The Government of Cambodia was invited to react to it, before its submission to the General Assembly.

III. SELECTED AREAS OF CONCERN

A. Rights of the child

21. The Constitution of Cambodia explicitly protects the rights of the child. Article 47 defines duties of parents in relation to their children, and article 48 states:

> "The State shall protect the rights of the children as stipulated in the Convention on the Rights of the Child, in particular, the right to life, education, protection during war time, and from economic or sexual exploitation. The State shall protect children from acts that are injurious to their education opportunities, health and welfare."

Article 68 provides for free education in public schools for nine years. Article 73 states:

> "The State shall give full consideration to children and mothers. The State shall establish nurseries and help support women and children who have inadequate support."

22. In its First Socio-economic Development Plan, 1996-2000, the Government of Cambodia stated that improvements in the situation of women and children would require concerted effort and an integrated approach. It specified:

> "The first step will be to address the changes in legislation which result from Cambodia's ratification of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women. Public information and programmes of advocacy will ensure that there is widespread awareness of the content and the implications of Cambodia's accession to these Conventions. These will underpin an integrated, multisectoral development programme which systematically addresses the priority concerns of women and children."

23. The Special Representative welcomes this comprehensive and planned approach to the implementation of the rights of the child. Important also is the high-level coordination structure set up in November 1995 within the Government and with non-governmental organization participation for all aspects of children's rights. This body, the Cambodian National Council for Children, held its first meeting during the visit of the Special Representative. A national plan of action for the survival, development and protection of children has been produced and focus on development in the fields of education and health. Another essential move was the incorporation of human rights in the curricula for primary and secondary schools. 1 June, International Children's Day, has been declared a government holiday.

24. During his first mission, the Special Representative asked questions about measures to prevent child prostitution and trafficking. Both Prime Ministers indicated their deep and personal concern about the situation. Child prostitution and the trafficking of children for the purpose of prostitution is rapidly becoming a serious human rights problems in Cambodia. In many individual cases the problem can only be characterized as one of slavery and trade in human flesh, practices that shockingly are on the increase not only in Cambodia but in many parts of the world at the end of the twentieth century.

25. Thorough comprehensive and reliable statistics are not yet available, and the total number of child victims of commercial, sexual exploitation is unknown. Local and international non-governmental organizations, UNICEF and Cambodian authorities report that the incidence of children being abducted and forced into prostitution is large and growing. One survey suggested that approximately 30 per cent of female prostitutes in Cambodia are under the age of 18. Some non-governmental organizations report an alarming decrease in the age of child victims of commercial, sexual exploitation interviewed in brothels. Girls as young as 10, 11 and 12 years old are found in brothels. Many young girls are abducted simply because they are virgins.

26. Though foreign men are a significant and increasing factor, the overwhelming majority of cases involve adult, male Cambodians and minor, female Cambodians. The 1995 UNICEF situation report on trafficking and prostitution in Cambodia estimates that between 65 and 70 per cent of the prostitutes in the country are Cambodian, contrary to the popular belief that most of the prostitutes are of ethnic Vietnamese origin. No specific figures related to ethnicity are available for minors.

27. Reports of sexual exploitation of boys are also increasing. One survey by End Child Prostitution, Abuse and Trafficking-Cambodia included reports of 20 cases of sexual exploitation of young boys aged from 9 to 16 years. Cambodia is now advertised on the Internet as a desirable place for paedophiles interested in young boys.

28. There are many root causes of the increase in child prostitution and trafficking. As with the traffic and trade in illicit narcotics, the "demand" must be recognized as an integral part of the problem. There would be no problem of child prostitution or trafficking of children if there was not a strong market for these children.

29. An important supply-side cause of child prostitution and trafficking is poverty and its attendant consequences. Poverty increases the pressure on families to consider otherwise unthinkable economic solutions to their problems. This is exacerbated by the rise in the number of children per family and the lack of access to education or affordable health care.

30. Children are sold into prostitution by parents in dire economic circumstances. Many parents are tricked into believing that their children are going to work as maids or waitresses and will be able to remit some of their salaries to support the family. Some parents are under such economic pressure that they turn a blind eye and accept commissions from traffickers who claim to be offering employment to their children in Phnom Penh or other distant locales. Some children with no other means of support enter this work "voluntarily".

31. The Special Representative was informed that there is a growing and increasingly powerful network of buyers, middlemen and brothels supporting this illicit trade. As stated in the First Socioeconomic Development Plan, sophisticated networks for abduction, sale and trafficking seem to have been established both domestically and internationally. Many brothel owners appear to receive the protection of local police or other officials.

32. Once purchased, many child prostitutes are forcibly held until the brothel owner has earned a sufficient return on his or her investment. Girls who attempt to escape are often beaten, they and others are then physically locked inside the brothel. This can lead to extreme danger, particularly in case of fire. Some prostitutes have reportedly died in recent months, unable to escape when fire engulfed the buildings in which they were held captive.

33. The increase in child trafficking and prostitution is particularly worrisome in view of the quick spread of HIV/AIDS and other sexually transmitted diseases. Cambodia has one of the fastest growing rates of HIV infection in Asia. In 1995, WHO and the Ministry of Health estimated that 38 per cent of the

prostitutes in Cambodia were HIV-positive. No separate figures for children are available.

34. Article 34 of the Convention on the Rights of the Child obliges States parties to protect children from all forms of sexual exploitation and sexual abuse:

> "States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
>
> (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
>
> (b) The exploitative use of children in prostitution or other unlawful sexual practices;
>
> (c) The exploitative use of children in pornographic performances and material."

35. Though Cambodian law related to child prostitution and trafficking is not very detailed, it is sufficient for law enforcement officials to begin to address the problem. In January 1996 the National Assembly adopted a Law on the Suppression of the Kidnapping, Trafficking, Sale and Exploitation of Human Beings, which includes substantial criminal penalties for any persons involved in the purchase, sale or kidnapping of any person. Enhanced prison terms are included if the victim is less than 15 years old. In addition, article 42 (3) of the Criminal Law states:

> "Any person who procures, entices or leads away, for purposes of prostitution, or sexually exploits a minor, even with the consent of that minor, shall be liable to a term of imprisonment of two to six years."

36. Neither of the above laws nor any other domestic law appears to establish a uniform legal age for a child. There is also no legally established age for sexual consent. Official clarification to this effect would be a valuable contribution to law enforcement efforts, as there appears to be confusion among police, judges, prosecutors and others about the legal age of a child.

37. The lack of legal action against persons involved in child trafficking and the owners of brothels containing child prostitutes is an aggravating factor. Though child prostitutes are seen sitting openly in front of brothels in many parts of Phnom Penh and in the other provinces, police action is rare. A welcome exception was a pre-planned police raid in Battambang in August 1995, which lead to several arrests. Neither non-governmental organizations nor the Centre for Human Rights report any convictions for violations of article 42 (3) of the Criminal Law or the Law on the Suppression of the Kidnapping, Trafficking, Sale and Exploitation of Human Beings.

38. This is a complex problem, which can be resolved only by concerted action on many fronts. As stated in the First Socioeconomic Development Plan:

> "Conditions of poverty and social upheaval, an underdeveloped legal infrastructure and weak law enforcement all contribute to the rapid growth of this industry. While the Royal Government has made efforts to address the problem, such as banning brothels in Phnom Penh, these measures have had little impact so far."

39. Sexual contact with and the sale of children is simply wrong. That it is not seen to be wrong by customers and sellers of children is an enormous social challenge that must be addressed in schools, pagodas, the workplace, the media and government agencies. This is also a question of personal morality in which customers, profiteers and parents must take responsibility for their actions. National and public leadership is necessary to create an environment where purveying the sexual services of children is considered to be as immoral and illegal as the rape, bondage or kidnapping of any other class of persons.

40. Cambodia is in a transitional stage during which this emerging problem may be tackled with some hope for success. This, however, will only happen if serious measures are taken on an urgent basis. The Special Representative commends the public and private initiatives of both Prime Ministers. It is important that this concern be translated into energetic action by the relevant authorities: effective law enforcement, a comprehensive programme of prevention, including an awareness and education campaign, and support to non-governmental efforts to rehabilitate victims.

41. The Special Representative welcomes the initiatives and interest demonstrated by local and international non-governmental organizations and encourages the Government and non-governmental organization community to cooperate closely to combat this scourge. This is an issue of great concern to the Special Representative, who will follow it closely throughout his tenure.

B. Rights violated through the use of landmines

42. Anti-personnel landmines and unexploded ordnance continue to kill and maim several hundreds of Cambodians every year. Landmines and unexploded ordnance also render large areas of the land unfit for agriculture and development, thereby seriously retarding the economic development of the country. In addition, landmines and unexploded ordnance also violate various fundamental rights of the people, including the freedom of movement, right of residence and the rights to health and education. The victims are indiscriminately chosen, but children are particularly victimized. They are killed, maimed or deprived of their basic rights to education and development as a result of the destruction of their families by mines. Women also pay a heavy price directly or indirectly when other family members are killed or injured.

43. These mines and unexploded ordnance will continue to kill and mutilate human beings and sabotage the economic development of Cambodia for many years to come, adding to the terrible human suffering and its related social and economic consequences of an estimated 40,000 war invalids who already exist in Cambodia. An estimated 150 to 200 Cambodians step on mines or are injured by unexploded ordnance every month. Nearly 1,700 victims were reported in 1995. In the first five months of 1996 alone, 1,333 people were injured and 206 were killed

according to statistics compiled by the British demining non-governmental organization, the Mines Advisory Group. In March 1996 alone, 473 victims were reported from the five most heavily mined provinces of the country. Civilians make up between a third to half of the casualties and among them approximately half are children. Many more instances are believed to go unreported.

44. During his current mission, the Special Representative visited a demining site in Siem Reap province to observe the work of a demining team from the British non-governmental organization, Halo Trust. This non-governmental organization and other demining agencies such as Cambodian Mines Action Centre, the Mines Advisory Group and the Compagnie française d'assistance are performing the painstaking and very hazardous task of clearing landmines and unexploded ordnance and thereby make Cambodia a safer place. In addition to the dangers inherent in their work, some of these agencies and their workers have also been the victims of criminal attacks by the Khmer Rouge.

45. In March 1996, a team of 30 deminers from the Mines Advisory Group were captured by a group of former Khmer Rouge soldiers who had defected to the government side but again defected back to the Khmer Rouge, in Angkor Chum district in Siem Reap Province. The kidnappers initially demanded a ransom and released everyone except two deminers, a British instructor and his Cambodian assistant. Both men were handed over by their kidnappers to the Khmer Rouge leadership and since then they are believed to be being held in Anlong Veng, the northern headquarters of the Khmer Rouge. The Special Representative strongly condemns this cowardly act by the Khmer Rouge and demands that these men be unconditionally released as soon as possible. These men were working to improve the lives of Cambodians and it is particularly disturbing that they have been targeted for this criminal act. It is imperative that the demining agencies be strongly supported by both the Government and the international community.

46. At a conference on landmines held in Phnom Penh in June 1995, Mr. Chea Sim, the President of the National Assembly, acting in his capacity as the then interim Head of State, announced that the National Assembly supported the intention of the Government to legislate a ban on the use, stockpiling and manufacture of anti-personnel landmines. This commitment has been reiterated in public by other leaders including His Majesty King Norodom Sihanouk, First Prime Minister Norodom Ranariddh and co-Defence Minister Tea Banh. The Second Prime Minister, Hun Sen, reiterated in his first meeting with the Special Representative on 2 July the determination of the Government to prohibit anti-personnel landmines in Cambodia. He gave his firm assurance that Cambodia had ceased long ago to import mines and that appropriate instructions had been issued to the armed forces, including those assigned to front-line duties, to desist from using mines. The Special Representative welcomes these statements and highly commends the effort of the King and the Government to eliminate anti-personnel landmines. He also welcomes and warmly encourages the efforts currently under way to legislate a ban.

47. The draft law on the banning of anti-personnel landmines is understood to be ready for submission to the Council of Ministers and is expected to be submitted soon. It was prepared in mid 1995 by Ieng Mouly, the Director of Cambodian Mines Action Centre and the Minister of Information, with the technical assistance of the United Nations Centre for Human Rights, relevant

national and international non-governmental organizations and United Nations agencies. This draft law provides, inter alia, for the banning of the use and manufacture of anti-personnel landmines, the destruction of existing stockpiles over a transitional period and criminal penalties for contraventions. It also provides for monitoring by demining non-governmental organizations and others of the implementation of the law and facilitates international assistance.

48. Because of the severity of the problem of landmines in Cambodia, the Special Representative, encouraged by statements made by Cambodian leaders, believes that it is essential to adopt this draft law and effectively implement it as soon as possible. This will strengthen the process of gradually eliminating the scourge of landmines from the country and thereby facilitate the economic development and the effective enjoyment of fundamental human rights by Cambodians. The adoption of the law will also strengthen the Government's stated foreign policy objective of opposition to the manufacture, export and use of mines and will establish Cambodia as a leading nation in the international campaign towards a total ban on landmines. The adoption of the law will also facilitate the mobilization of funding from the international community for the enormous and expensive task of demining.

49. The Special Representative strongly supports the international campaign for the total ban of landmines and encourages the international community to provide increased funds for mine-clearing operations.

C. Rule of law, independence of the judiciary and administration of justice

50. The Special Representative raised with both Prime Ministers issues relating to the rule of law and the functioning of justice as matters of deep concern. A major problem is that the Constitutional Council has still not been formed. The Council is the body designated by the Constitution to determine the constitutionality of legislation and to decide contested cases in the election of members of the National Assembly. The members are to be appointed by the King, the National Assembly and the Supreme Council of Magistracy. Though the King submitted a list of nominees in 1994, the National Assembly and the Supreme Council of Magistracy have still not submitted their nominees. No draft organic law specifying the organization and operation of the Constitutional Council has been drafted. The lack of a Constitutional Council means that there is no legal forum to determine the constitutionality of various legislative enactments, such as the Press Law. This seriously undermines both the reality and the appearance of the rule of law in Cambodia.

51. Though a law creating the Supreme Council of Magistracy was adopted in 1994, it has still not been convened. Only the Supreme Council of Magistracy may appoint, transfer and discipline judges and prosecutors. It also has the legal responsibility to review all draft legislation related to judicial affairs. Both Prime Ministers agreed with the Special Representative that it was urgent that the Supreme Council should start functioning.

52. Although required by the Constitution, no law on the status and functioning of the judiciary has been submitted to the National Assembly. Without such a

law the legal basis for the entire Cambodian court system is very weak. Such a law could address issues such as the roles of trial judges, investigating judges, prosecutors and clerks, training and promotion of judges, membership in political parties, conflicts of interest, ranks and salaries. Such legislation is among the most basic of all laws in the establishment of the rule of law.

53. Another problem is that there is no law on contempt of court. Court orders are often ignored by parties, witnesses, police officers and others. The power to fine and, where necessary, imprison persons for failure to follow court orders is critical in establishing basic respect for the courts and the rule of law.

54. There are approximately 70 judges, 40 prosecutors and 400 clerks in the provincial and municipal courts of Cambodia. The number of judges and prosecutors is inadequate given the large and growing caseloads of the courts. Approximately 40 other potential judges and prosecutors have been trained through the French cooperation with the Ministry of Justice.

55. Owing to the insufficient number of judges and prosecutors there is a large and growing number of criminal and civil cases. Many criminal trials are not held within the prescribed six-month period because of the lack of judges and prosecutors. Many other criminal cases are not properly investigated because of insufficient numbers of judges and prosecutors. Many civil litigants face years of delay. With too few judges, many court clerks perform judicial functions outside their legal competence, such as interviewing witnesses and parties.

56. There is one Appeals Court, with seven judges and two prosecutors. The Appeals Court is located in a small wing of the Ministry of Justice, an inappropriate site for an independent judicial organ. The Appeals Court, founded in 1994, has insufficient space and materials to carry out its work properly. Because of inadequate means of transportation, one judge stated that in many cases the Court was unable to investigate cases properly and therefore had an inadequate factual basis upon which to render judgements.

57. There is one Supreme Court, with nine judges and two prosecutors. The Supreme Court is located in a building resembling an apartment block. Though it is the final court of appeal in Cambodia, its opinions are very short and rarely offer any jurisprudential leadership to the lower courts. For the rule of law to develop in Cambodia, basic legal principles must be established in the opinions of the Supreme Court.

58. In spite of the fact that the Constitution recognizes international human rights treaties and norms and Cambodia is a party to many international human rights conventions, such as the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, even senior judges appear to be insufficiently aware that such treaties are now part of domestic law and may and should be relied upon by the courts in rendering judgements.

59. Very few judges or prosecutors have formal legal education. The Special Representative commends the open and active cooperation of the Ministry of Justice with the judicial mentor programme of the United Nations Centre for Human Rights and the Cambodian court training project of the International Human

Rights Law Group. The judicial mentor programme offers valuable on-site training and advice to the judiciary and is the best short-term method of raising the professional standards of the judiciary. Particularly important is the request of the Minister of Justice for the judicial mentors to provide training to local police, prison staff, military police and local authorities about human rights and the administration of justice, focusing on the primary role of the courts. In this way, an integrated approach to building the rule of law has begun at the local level.

60. Judges, prosecutors and clerks operate in very difficult physical, material and financial conditions. Most court buildings are extremely dilapidated and in need of large-scale and urgent repairs. Many courts have no electricity, leaky roofs, crumbling walls, tiny courtrooms, insufficient office space for court staff and virtually no materials, such as file cabinets, paper, pens and so on. The courts also have very limited budgets for operational expenses, such as investigations and travel. This results in some litigants bearing the costs for these activities, leading to claims of judicial bias by opposing litigants. This has a major impact on both the work and the status of the courts. Though this problem is the responsibility of the State, in the short term the resources simply do not exist in the national budget for these purposes. Through the joint UNDP/UNCHR project and the assistance of Japan, court buildings in six provinces are undergoing substantial reconstruction, including the building of new courtrooms, provision of furniture and office supplies. More such support is urgently needed.

61. The Special Representative notes that many judges, prosecutors, police and local officials do not seem to be aware or have copies of recently adopted laws and regulations. The Official Journal, which is published by the Council of Ministers and contains new laws and regulations, is not disseminated broadly or in sufficient quantity. The Special Representative notes that efforts have been made or will be made in this regard by the Cambodia office of the United Nations Centre for Human Rights, Cambodian Development Council (in cooperation with UNDP) and AusAid, the Australian development agency. The Special Representative encourages such efforts. It is important to improve the system and the volume of publication of laws and regulations and to disseminate them widely in order to improve the respect for the rule of law.

62. Judges and prosecutors earn no more than civil servants - approximately $20 per month - while members of the National Assembly and Government earn approximately $1,500 per month. Along with the poor physical conditions in which the judiciary works, this results in a lowered status for the judiciary within the Government and the public. Many judges and prosecutors must pursue outside income to survive, such as rice farming or other business activities normally incompatible with the role of a judicial officer. This adversely affects the quality of their work. Low salaries also open the judiciary to widespread allegations of corruption.

63. Under the Constitution, the judiciary in Cambodia should be independent from the political administration and political parties. The Special Representative noted a growing awareness of this principle in his discussions with judges. However, it seems to be generally assumed that a number of the

sitting judges, most of whom were appointed by the previous Government, continue to be closely affiliated with the Cambodian People's Party.

64. There is a problematic practice in several provinces of convicted prisoners not being automatically released from prisons at the end of their sentences according to court orders, since prison officials are required, in many instances, to also obtain the signature of the Provincial Governor or Deputy Governor before release. This has resulted in the illegal detention of prisoners beyond the expiration of their sentences.

65. It was reported to the Special Representative furthermore, that judges not infrequently determine the outcome of a case before trial. Judgements are often prepared before any testimony has been taken at trial. This is not in accordance with the fair trial provisions of article 14 of the International Covenant on Civil and Political Rights. A trial should be the final and most important stage of a long process of factual investigation by the police, prosecutor and investigating judge. Evidence used as the basis for rendering a judgement should come from witnesses present at trial and subject to court questioning and cross-examination. This is particularly important with the police and material witnesses. Police reports alone should not provide the basis for conviction, as is reportedly the norm in many courts. Any such convictions should be regarded as inherently unsafe and should be reviewed carefully by the Appeals Court and Supreme Court.

66. Courts have, in a number of cases, held detainees for the maximum of six months before trial for gathering enough evidence to present a prima facie case of guilt. Accused persons are routinely brought to court in prison clothes. In conformity with the principle of the presumption of innocence, the police or prosecutor should establish a prima facie case before issuing an arrest warrant and depriving a person of his or her liberty for a substantial period of time.

67. The Special Representative commends officials in the Cambodian prison system and the Minister of Justice for taking strong public stands against the use of torture against persons in custody. Great strides appear to have been made in the reduction of torture inside Cambodia's prisons. With the assistance of donors such as Australia, the use and prevalence of dark cells is also being reduced. However, the Special Representative received information indicating that there have been incidences of torture by the police immediately after arrest in order to obtain a confession or punish the accused. It is the responsibility of the judiciary to inquire into each confession to ensure that it was made voluntarily and to suppress all confessions made involuntarily. Prosecutions against police or prison officers or others found to have committed acts of torture should be initiated by prosecutors. The Special Representative intends to look further into this issue during a forthcoming mission.

68. The Special Representative commends the excellent and expanded work of Cambodian "defenders" and lawyers representing criminal defendants and poor persons. In spite of the growth of these organizations and the improvement in the quality of the services offered, there is still an enormous unmet need in much of the country. A large percentage of criminal defendants still do not have any access to counsel before or during trial. Many others have only formal access to counsel, as the defender is often assigned to the case just before

trial, has difficulty in gaining access to a defendant in prison, or does not have the time or means to carry out an adequate investigation or preparation of the case. Lawyers are not available in sufficient numbers to represent poor defendants in criminal cases. As a result, defenders will be needed in Cambodia for many years. The judiciary has a special responsibility in such cases to ensure that justice is done to each unrepresented or under-represented defendant and that each person receives a fair trial.

69. A crucial challenge facing the judiciary, the rule of law and the promotion and protection of human rights in Cambodia is impunity. Impunity is presently both de facto and de jure. De facto impunity seems to be the result of the entrenched power of the military, police and other armed forces in a country engaged in armed struggle for more than a generation. Several sources told the Special Representative that there are some "bad elements" within those ranks who now appeared to be too powerful or dangerous to face prosecution. Though the Special Representative has no possibility to confirm this description, he finds this widespread perception an important fact in itself.

70. Institutionalized, de jure impunity is more the result of the passage in 1994 of the Law on Civil Servants. Article 51 of this law provides that, except in cases of flagrante delicto, no civil servant may be arrested or prosecuted for any crime unless the Government or the concerned Minister consents in advance. It has happened in a number of cases that requests for authorization have been denied or just not processed.

71. Delays have been common and made it possible for accused persons to run away in a number of cases. Judges and prosecutors have claimed that article 51 contravenes the basic principle of equality of all persons before the law and creates a climate of lawlessness in which persons in the police or military are not held accountable for their acts, even when such acts include murder, rape, robbery or arson. Article 51 has effectively shielded them from prosecution. This is a serious derogation from the rule of law and may encourage police and military officials to continue to commit abuses in the knowledge that they are not likely to be prosecuted.

72. One of the most distressing examples of impunity has been the attacks and threats on judges and prosecutors in response to attempts to prosecute members of the military or police. No prosecutions have taken place in cases of attacks on the courts in Kompong Som, Battambang, Svay Rieng, Stung Treng and Kampot Provinces, though it appears that the perpetrators are known to the authorities. Judges and prosecutors in several provinces continue to report threats to their physical security and admit to choosing which cases to prosecute very carefully when members of the military or police or their families are involved. For example, in June 1996 the court in Siem Reap Province reported serious and credible threats by the military against the physical security of court personnel as the result of the court's judgement in a case. This atmosphere makes it difficult for the judiciary to play its proper role.

73. The Special Representative learned during his mission that both Prime Ministers were deeply concerned about the situation and supported moves to protect the independence and integrity of the judiciary. During a meeting on 2 July 1996, the Second Prime Minister stated that he supported the repeal of

article 51. The Special Representative greatly appreciates this endorsement of the equality of all persons before the law and hopes this will be followed by a repeal of the article by the National Assembly.

D. Elections, political rights and freedom of expression

74. The principles for the new Constitution of Cambodia contained in annex 5 to the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict signed in Paris on 23 October 1991 state, inter alia, that Cambodia "will follow a system of liberal democracy on the basis of pluralism. It will provide for periodic and genuine elections ... with a requirement that electoral procedures provide a full and fair opportunity to organize and participate in the electoral process".

75. This commitment is reflected in the Constitution, which provides that Cambodia adopts a political regime of liberal democracy and pluralism (art. 51). The term of the National Assembly is five years (art. 78) and the procedure and process for the election shall be determined by an electoral law (art. 76). The Constitution also guarantees the right to form associations and political parties and that these rights shall be specified in law (art. 42).

76. The General Assembly (in its resolution 50/178, para. 6) and Commission on Human Rights in its resolution 1996/54, (para. 10), have urged the Government to promote and uphold the effective functioning of multi-party democracy, including the right to form political parties, to stand for election, to take part freely in a representative government and to enjoy freedom of expression.

77. The constitutionally mandated national election is scheduled to be held in 1998.

78. The Government has also announced plans to hold a local or "commune" election in 1997. There are approximately 1,200 communes in Cambodia. Commune chiefs wield powers ranging from collection of state revenues to maintenance of public order, including through the control of militias. Most current commune chiefs were appointed by the previous Government and all reportedly continue as members of the Cambodian People's Party. While commune elections are not constitutionally required, the holding of the commune election may contribute to social and political reform in Cambodia. Commune officials are the most important local government structure for the everyday life of most Cambodians and the level at which most Cambodians have contact with the Government.

79. Against this background, the Special Representative raised issues during his mission relating to the preparation of the elections and, in particular, the need for a legal framework that guarantees free and fair elections and for effective measures to protect freedom of expression. Both prime ministers stated that the elections will be held on schedule and that it is important that a legal framework be put in place for that purpose. To hold free and fair elections, the following laws appear to be necessary.

1. Law on political parties

80. The Constitution guarantees the right to form political parties but states that a law shall govern this field. A law on political parties is urgently needed to enable the full enjoyment of the rights of all parties to exist and participate in multi-party elections. The Special Representative welcomed the statement by the Second Prime Minister during their meeting on 2 July 1996 expressing his strong support for the rights of all Cambodians to form political parties and carry out political activities. The Ministry of Interior has begun drafting the law with the advice of the Centre for Human rights and the Minister of Interior has stated that this law would be submitted to the National Assembly for adoption before the end of 1996.

2. Commune election law

81. In early 1996 the Ministry of Interior established a committee to draft the commune election law. This committee consists of four nominees of the United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia and eight Cambodian People's Party nominees. At the time of writing of the present report, the committee had completed drafting the section on the role and duties of the commune chiefs and was working on the section related to the organization of the commune election. It is not known when the draft law may be submitted to the National Assembly.

3. National election law

82. At the time of writing, work on the national election law appeared not to have begun.

4. Constitutional Council law

83. Among its important responsibilities, the Constitutional Council is given responsibility under the Constitution for resolving disputes about the election of members of the National Assembly. The lack of a Constitutional Council at the time of national elections could result in severe difficulties, as there may be no agreed mechanism for the solution of disputes.

5. Other laws

84. The Government has reportedly drafted a military statute that would prevent members of the armed forces from participating in politics. This would be a welcome development, as it is essential that the military remain neutral during the election period. The police, civil servants and the judiciary should also be excluded from partisan political activities in order to provide the proper atmosphere for free and fair elections.

85. In spite of evident good faith within the Government, thus far the administrative aspects of the elections have not, in the view of the Special

Representative, received sufficient attention. The Ministry of the Interior organized a seminar on elections in October 1995, attended by many international experts on elections, which resulted in a plan of action. This plan included a timetable. Many of the deadlines in that timetable have unfortunately been missed. Important policy issues, such as the use of computers and the demarcation of constituencies, need urgent attention, as they will have political, financial and technical consequences that need to be addressed soon. The institutions responsible for developing policy and planning, such as an independent electoral commission, have not yet been clearly identified.

86. A permanent and independent electoral commission responsible for the conduct of elections would be an indispensable component of a neutral political environment in which parties, candidates and the public have maximum faith in the integrity of the electoral process. An electoral commission would have responsibility for registration of voters, voter education, supervision of polling stations, counting of votes, announcement of results and general enforcement of the electoral law. The Special Representative believes that the speedy creation of an independent electoral commission would send an unambiguous signal to the people of Cambodia that the Government of Cambodia is committed to free and fair elections.

87. It is very positive that Cambodian non-governmental organizations have formed two groups, The Committee for Free and Fair Elections in Cambodia and the Coalition for Free and Fair Elections, in order to play an active role in voter education, election monitoring and other election activities. Many of these non-governmental organizations have experience from 1993 in performing similar activities and can make essential contributions to promoting the freedom and fairness of the elections. For the elections to be free and fair, it is essential that these non-governmental organizations play a critical and central role in the electoral process.

88. The Co-Ministers of the Interior have formally requested UNDP to coordinate technical assistance for the elections. It is essential that the international community assist Cambodia in its effort to consolidate the democratic gains made since 1992.

89. One factor delaying the preparation of the elections is the recent political tensions and difficulties between the two major political parties, the Cambodian People's Party and the United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia, ground issues relating to the sharing of power at district and national level.

90. The Khmer Nation Party, an opposition party led by a former Minister of Finance and Member of the National Assembly, has opened or attempted to open offices in at least four provinces. Although the Constitution states that citizens have the right to form political parties, the Government has stated that no new political parties may be recognized until a new Law on political parties is adopted. This unduly restricts the fundamental right of political freedom as guaranteed in article 42 of the Constitution and article 25 of the International Covenant on Civil and Political Rights. In the absence of a law, the rights guaranteed by the Constitution should be respected. Through the application of the UNTAC Electoral Law, which contains provisions for

registration of political parties, laws consistent with the spirit of the Constitution shall remain in effect until altered or abrogated. This was to ensure that, where possible, vacuums in Cambodian law could be filled pending passage of new legislation.

91. In spite of the lack of legal recognition, the Khmer Nation Party has continued to recruit members and to open offices, although in some cases there have been violent incidents. The Special Representative is concerned about reports of attacks on political party workers and offices in various Provinces. At least two members of the Party have been killed, possibly for political reasons. Other incidents include the surrounding of an office of the United Front by a large group of armed men in Ratanakiri province, the destruction of Khmer Nation Party signs in Kandal and the 29 January 1996 surrounding of the Khmer Nation Party's office in Phnom Penh, which resulted in the detention for four hours of local and foreign journalists, human rights workers and party members by hundreds of heavily armed security personnel after an alleged car theft.

92. The coming period is critical in creating the necessary political and administrative context for the commune and national elections. The Special Representative understands that an atmosphere of fear and intimidation inimical to the conduct of free and fair elections has begun to appear in certain parts of the country. It is important that the Government firmly establish the principle that all political parties have the right to legal recognition, may recruit new members, open new offices and seek to attract support; they must be able to operate without fear of closure, threats or attacks.

93. One of the most important means of exercising this freedom and of communicating with the public is through the broadcast media. The Special Representative is concerned that access to ownership or management of radio and television stations remains restricted. While the Government and major political parties own or operate television and radio stations, smaller opposition parties have not been authorized to own or operate such stations. Equal and fair access to broadcast media is essential in a democratic society respecting human rights and particularly important for the conduct of free and fair elections.

94. Free and fair elections can only occur if freedom of expression is fully respected. Article 19 of the International Covenant on Civil and Political Rights specifies that "this right shall include freedom to seek, receive and impart information and ideas of all kinds". Freedom of expression is thus a right jointly held by writer and reader, broadcaster and listener, Government and governed. Any unnecessary restrictions or interference with this right affect not only the journalist or media owner, but the entire public as well.

95. Freedom of the press will also be critical in an election period. For those unable to afford radio or television stations, the press may be the only means by which a political party, candidate or interest group may make its views known to the public. Free and vigorous debate of issues tests the quality of parties and candidates and is the hallmark of a democratic society. The Special Representative is therefore concerned about apparent inconsistencies in the application of relevant laws in relation to the media. One such case is the

12 February 1996 administrative closure for 30 days of Republic News under the 1995 Press Law for publishing information allegedly affecting "national security" or "political stability." Fearing further legal action, Republic News remained closed until 18 June 1996, but after its first issue the Ministry of Information initiated new legal action against the newspaper. This is the first case brought against a newspaper under the 1995 Press Law and raises renewed concerns about the lack of definitions of "national security" and "political stability" in the law and the potential for selective and arbitrary legal action.

96. On 28 June 1996, the Supreme Court decided to affirm the conviction and sentence of Chan Rattana, the former editor of the Voice of Khmer Youth newspaper. He had been convicted in February 1995 and sentenced to one year in prison under article 62 of the criminal law related to disinformation for criticism of the First Prime Minister. Rattana was released after one week in prison after the King, with the explicit support of the Co-Prime Ministers, granted him an amnesty. The Special Representative expressed his respect to the King and the Co-Prime Ministers for this decision.

97. The previous Special Representative reported on cases of criminal violence against journalists. Two new cases have occurred since then. A radio announcer of the United Front, Ek Mongkol, was shot on a Phnom Penh street on 8 February 1996 by two men on a motorcycle. Mongkol was seriously injured and evacuated to Bangkok, where he recovered from his wounds.

98. On 18 May 1996 Thun Bun Ly, editor of the opposition newspaper Khmer Conscience, was assassinated in broad daylight on a Phnom Penh street by two men on a motorcycle. Bun Ly, who was facing imprisonment for articles published in his newspaper, was also a member of the Khmer Nation Party Steering Committee and its Deputy Director of Administration. No one had been arrested at the time of writing.

99. It is a sad fact that many journalists in Cambodia do not act professionally and regularly publish false, defamatory and often highly inflammatory statements. Still, there is no excuse whatsoever for the threats and violent attacks against some journalists and media. Since the 1993 elections, none of the cases of violence against journalists have resulted in the arrest and conviction of the perpetrators. One aspect of particular concern and which requires urgent clarification is that in a couple of these cases, the identity of the perpetrators is allegedly known and still no criminal action has been taken. The failure to prosecute has contributed to a climate of impunity and to an atmosphere of fear within the journalistic community. Several journalists report that for security purposes they now sleep in different houses on different nights, avoid going out at night and practise self-censorship in their writings.

100. The Special Representative suggests the establishment of a commission of inquiry to clarify why investigation of these violent attacks, in particular those which had been reported by the previous Special Representative, has been unsuccessful and what measures can be taken to remedy these apparent failures.

IV. OTHER DEVELOPMENTS

101. The Special Representative learned that there is currently no legal framework for the establishment or operation of prisons. The lack of such legislation may lead to confusion about the rights of prisoners, responsibilities of authorities and the possibility of regular monitoring of conditions by local non-governmental organizations. In consultation with the Centre for Human Rights, in early 1995, the Ministry of Interior prepared draft prison rules, which, if implemented, would conform with Cambodia's international human rights obligations and respond to the actual problems facing the prison administration in Cambodia. The Special Representative recommends early adoption of these rules, which also will facilitate the mobilization of funds from donors to rehabilitate Cambodia's ageing prisons. He commends the Government of Australia in particular for making funds available for prison rehabilitation and encourages other donors to address this important problem.

102. A draft law on associations and non-governmental organizations has been prepared by the Ministry of the Interior with the assistance of the Centre of Human Rights and submitted to the Council of Ministers. The Special Representative commends the cooperation of the Ministry of Interior with the Centre for Human Rights and the non-governmental organization community and recommends that the Government and the National Assembly retain basic principles in the draft such as simple and clear registration procedures, non-intrusive reporting requirements and guarantees against arbitrary dissolution.

103. A draft law on the control of drugs was submitted to the National Assembly in May 1996. The draft was prepared by the Ministry of Justice with the assistance of the United Nations International Drug Control Programme. The draft contains provisions, such as the right of the police to undertake searches, seizures and asset confiscations without court order, extended periods of detention for accused persons, telephone tapping and postal searches, which may contradict the Cambodian Constitution, the International Covenant on Civil and Political Rights and Cambodian criminal law and procedure. The Special Representative recommends that the Government and National Assembly consult with the Centre for Human Rights, other legal experts and human rights non-governmental organizations to ensure that the draft conforms with human rights norms.

104. The right to environment and development is a major human rights issue that affects the lives of most Cambodians. Like his predecessor, the Special Representative notes with concern reports about continued illegal logging, despite government bans. This practice has serious consequences for everyone in Cambodia, in particular the ethnic minorities in the north-east, whose culture and livelihood depend on their immediate environment. The Special Representative notes the undertaking of the Government to take serious measures to better regulate logging activities in Cambodia and recommends that adequate legislative and administrative measures be taken to ensure the full protection of these crucial rights.

V. REPORTING OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS CONVENTIONS

105. The Constitution of Cambodia states that the Kingdom shall recognize and respect human rights as stipulated in the Charter of the United Nations, the Universal Declaration of Human Rights and, the covenants and conventions related to human rights, women's and children's rights' (art. 31). Accordingly, Cambodia has ratified major international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. With these ratifications follow reporting obligations to facilitate discussions with the six United Nations treaty Committees.

106. The Special Representative welcomes the commitment and the seriousness with which the Government is undertaking its reporting obligations. He takes note that the draft reports on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child have been completed, and that the Government is preparing its reports under the Conventions against Torture and the Elimination of All Forms of Discrimination against Women. However, none of these reports have been sent to the Council of Ministers for final approval before submission to the United Nations monitoring committees in Geneva and New York.

107. During his mission, the Special Representative conveyed to the First Prime Minister and the Secretary of State of the Ministry of Justice, the importance of having the reports submitted in order that the dialogue with the committees could start. The First Prime Minister said he would ask that the draft reports be submitted to him and to the Second Prime Minister without delay so that the Government can finalize them and forward them to the relevant committees.

108. The Special Representative also met with the interministerial subcommittees in charge of the preparation of the reports on the Conventions against Torture and the Elimination of All Forms of Discrimination against Women. He was particularly impressed by the seriousness of the work undertaken by both subcommittees. He noted the difficulties encountered in gathering relevant information and data and encouraged further cooperation with ministries, non-governmental organizations, and other institutions. The Special Representative was informed about steps taken by the subcommittee on the Convention against Torture to document cases of allegations of torture and other cruel, inhuman and degrading treatment or punishment by cooperating with the human rights non-governmental organizations, in particular Adhoc, Licadho and Vigilance, as well as by gathering information from judges, prosecutors and local authorities in the Provinces. He discussed with the subcommittee the obligations under the Convention against Torture, and especially the adoption of clear legislation and instructions concerning the definition of torture and appropriate penalties for offenders, the need to train law enforcement officials, especially policemen, on the prohibition of torture and forced confessions and on how to conduct investigations in accordance with the law. He

suggested that the subcommittee raise awareness on this issue by, for instance, advertising in all police stations and relevant military offices statements by high-ranking officials explaining the prohibition of torture and ill-treatment. The Special Representative also emphasized the need to introduce effective procedural safeguards to prevent torture and ill-treatment, such as appropriate procedures to allow complaints by victims; independent, impartial and immediate investigations into such complaints; and compensation to victims of torture and ill-treatment.

109. In discussions with the subcommittee on the Committee on the Elimination of Discrimination against Women, the problem of finding statistics that are gender-specific was raised. It was clarified that the subcommittee had difficulties in obtaining relevant information from the provinces, in particular from the rural areas, as there was no effective system for countrywide data collection. The Special Representative suggested that the subcommittee inform the relevant ministries about its problems in getting data and about the need to have them collected. The Special Representative was pleased to know that there is now a Ministry of Women's Affairs and expressed the hope that women's affairs would not be confined to that Ministry alone but would be addressed by all ministries whenever relevant.

VI. FOLLOW-UP TO AND IMPLEMENTATION OF THE RECOMMENDATIONS OF THE PREVIOUS SPECIAL REPRESENTATIVE

110. The General Assembly in its resolution 50/178 and the Commission of Human Rights in its resolution 1996/54 had requested the Special Representative, in collaboration with the Cambodia Office of the Centre for Human Rights, to continue the evaluation of the extent to which the recommendations of the previous Special Representative had been followed up and implemented. The new Special Representative has seen that request as an important aspect of his task, also for the purpose of ascertaining consistency in the United Nations approach to the assistance to the Government in ensuring the protection of the human rights of all in Cambodia.

111. The recommendations of the previous Special Representative are important and cover a wide range of aspects of human rights. It is the opinion of the new Special Representative that the reporting of the follow-up to these recommendations should be integrated into established procedures for communications between the Government of Cambodia and the United Nations rather than through the establishment of any new mechanism. Two routes have been suggested. The first is that the Special Representative in his reports to the General Assembly and the Commission of Human Rights describe progress in the implementation of previous recommendations when reporting on specific areas; this is done in the present report on four particular topics: rights of the child, anti-personnel mines, the functioning of the system of justice and, finally, political freedoms, including the freedom of expression. The second approach is that the Centre for Human Rights provide the Ministry of Justice with documentation on the previous recommendations organized according to the six human rights conventions under which the Government is to submit reports. The suggestion is that the Government include a response to these recommendations in their reporting to the United Nations treaty committees.

This simplified approach was proposed by the Special Representative during his mission and agreed to by the Government.

VII. RECOMMENDATIONS

112. In the spirit of constructive cooperation, the Special Representative submits for consideration the following suggestions to the Government of Cambodia and to relevant institutions within the international community.

A. Rights of the child

113. The Special Representative recommends that the Government of Cambodia give urgent attention to the growing phenomenon of child prostitution and trafficking. A broad, comprehensive survey of the scope and precise nature of the problem is needed, including of its root cause. A particular problem requiring further investigation is the link between child prostitution and trafficking and other crimes, for instance the trade in narcotics. The role of the police and its apparent inability to perform effective crime prevention in this area is a priority area for a survey of this kind.

114. Such gathering of data, background factors and analytical information would assist the development of a comprehensive action plan against child prostitution and trafficking. The Cambodian participation in the World Congress on Commercial Sexual Exploitation in Stockholm in August 1996 and the resulting reports and recommendations would also contribute to the action plan. Both the Centre for Human Rights and representatives of the non-governmental organization community in Cambodia can be seen as partners in this planning effort, which would include effective criminal measures against all those who abuse children or organize their exploitation. Bilateral and multilateral donor agencies could be invited to contribute to the planning process and to the subsequent implementation efforts.

115. Efforts are also needed for prevention. An awareness campaign is required that would include the pagodas and other Buddhist institutions, the schools, the local authorities and the media. This might be a project to discuss and develop within the framework of the Cambodian National Council for Children.

116. It is important that activities of non-governmental organizations specializing in programmes to assist child victims of sexual abuse be supported in order that these efforts can continue and that the methodology can develop. This is an area in which foreign assistance is invited.

B. Rights violated by the use of landmines

117. The Special Representative recommends that the policy of a total ban of anti-personnel mines be confirmed through the early approval by the Council of Ministers of the draft law on landmines. This would allow for its adoption by the National Assembly before the end of the year.

118. It is essential that Cambodia continue to take part in the international efforts to prevent manufacture, trade and use of anti-personnel mines. This would be further facilitated by ratification by the Government of Cambodia of the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

119. Further international assistance is needed for the support of the demining programmes in Cambodia. The demining projects of experienced organizations like the Cambodian Mines Action Centre, the Mines Advisory Group, the Halo Foundation and the Compagnie française d'assistance require and deserve further funding.

120. The Special Representative expresses his concern about the security of demining personnel and suggests that effective measures be taken against any group that kidnaps or otherwise terrorizes these workers. This will require pre-planning and a coordinated approach between the Government, the involved organizations and international agencies. When hostages are taken, no efforts should be spared for their safe liberation.

C. Rule of law, independence of the judiciary and administration of justice

121. The Special Representative recommends that the Supreme Council of Magistracy be urgently convened and that it announce its selections for the Constitutional Council. It is important that the Supreme Council move quickly to appoint impartial, professional and well-trained judges and prosecutors to the provincial and municipal courts. The Council has the essential duty to ensure that judges and prosecutors are politically neutral. Judges and prosecutors should not be members of any political party.

122. Qualified, politically independent persons are to be selected as members of the Constitutional Council. It is important that this body be convened in the near future. An organic law on the organization and operation of the Council needs to be drafted and submitted to the National Assembly as soon as possible.

123. Also, there is a requirement in the Constitution that a law on the functioning of the judiciary be drafted and submitted to the National Assembly.

124. The budget for the administration of justice needs to be increased in the next national budget. Judges and prosecutors deserve a wage commensurate with their status as the constitutionally co-equal third branch of government. Funds are also required to renovate Cambodia's courts and for the operating costs of the courts, such as investigations and travel.

125. The Special Representative appeals to the international community to continue to provide support for training of the judiciary through the judicial mentors programme and the Cambodian court training project, for court renovation and for the publication and dissemination of laws and regulations, including through the Official Journal.

126. A government initiative is needed to instruct relevant ministries and local authorities, such as police, military personnel, military police, prison officials and local civil servants, to improve their cooperation and coordination with the courts, including by faithfully implementing court orders. In particular, it is important that they be instructed to respect the independence of the judiciary and to desist from actions that may interfere with the integrity of the judicial process.

127. The Special Representative recommends that adequate security be provided to court personnel as necessary. It is also of greatest importance that persons who have attacked or threatened to attack courts and court personnel be identified and prosecuted.

128. The principle that all persons be treated equally before the law is fundamental and requires the repeal of article 51 of the Law on Civil Servants.

129. Steps are needed to ensure that adequate numbers of lawyers and defenders be made available to accused persons. It is necessary that defenders be allowed to operate in Cambodia beyond 1997, as most accused persons are poor and do not and will not have access to lawyers.

130. The Special Representative proposes that clear measures be taken to ensure that judges consider only evidence presented at trial when making a decision. Evidence should come from live witnesses, subject to court questioning and cross-examination, and not from hearsay reports of witness statements, so as to ensure the right of the accused to examine the witnesses against him or herself. Police reports alone can not provide the basis for conviction in a fair system of justice. Police officers providing evidence must also be available for examination as required by Cambodian law.

131. The Special Representative also suggests further initiatives to ensure that judges and prosecutors are encouraged to make inquiries into the circumstances surrounding all confessions offered as evidence in criminal trials in order to prevent torture; that forced confessions not be admitted as evidence in trials; that any persons involved in the use of physical force to obtain a confession be prosecuted; and that prosecutors should individually interview prisoners who show signs of injury during their prison visits and initiate investigations and prosecutions where there is sufficient evidence of torture.

D. Elections, political rights and freedom of expression

132. The Special Representative makes the following recommendations:

(a) That a law on political parties allowing full freedom for the formation and operation of political parties be adopted as soon as possible. Until such a law is adopted new political parties should be registered following the provisions of the UNTAC Electoral Law;

(b) That laws on the commune and national elections be drafted and adopted as soon as possible to allow the maximum time for the preparation of and full participation in free and fair elections. As stated by the King, the First

Prime Minister and the Co-Minister of the Interior, all armed forces should be neutralized during the election period. The laws should also contain provisions for an independent electoral commission, equal access to the media, an effective mechanism to ensure secret ballots, dispute resolution mechanisms and clear authority for the participation of non-governmental organizations in voter education and election monitoring;

(c) That the administrative framework for the elections be developed as quickly as possible and cooperation be developed with the non-governmental coalitions for free and fair elections, the Committee for Free and Fair Elections in Cambodia and the Coalition for Free and Fair Elections. Following the UNTAC elections, Cambodia has thousands of trained and capable election workers in many fields. The Government should identify and recruit such persons to assist in the conduct of the election with the support of the donor community;

(d) That the Government bring to justice all persons involved in acts of violence, intimidation, threats or other acts that may jeopardize a neutral political climate in which free and fair elections may be conducted. Instructions should be given to all armed forces, regular and irregular, not to interfere with the activities of lawful political parties;

(e) That the relevant authorities conduct a thorough, professional and impartial investigation into the assassination of Thun Bun Ly. The results of the investigation should be made public and the perpetrators brought to justice. Other cases of violence against journalists must be investigated in the same manner and the perpetrators identified and prosecuted. A comprehensive inquiry into the problems of such criminal investigations is urgent;

(f) That no journalist should be imprisoned for the words he or she writes. In the case of defamation or other violation of the law, civil remedies should be used;

(g) That the donor community continue to provide financial and technical support to efforts for the improvement of the standard of journalism and for enhanced training and a fuller understanding of professional and personal ethics;

(h) That a broadcast law be drafted specifying the rights and responsibilities of broadcasters and a procedure for obtaining a broadcasting licence. Television and radio frequencies should be allocated on a non-political and non-partisan basis.

E. Reporting obligations

133. The Special Representative recommends that the Government of Cambodia give urgent priority to the early submission of reports under the procedures of the international human rights treaties that Cambodia has ratified. Particular attention should be given to the immediate submission of the report on the Convention on the Elimination of All Forms of Racial Discrimination.

VIII. CONCLUDING REMARKS

134. Given the human and material devastation resulting from the bombings in the early 1970s, the mass killings and destruction under the Khmer Rouge regime and the prolonged civil war and international isolation of Cambodia for nearly 13 years, Cambodian society has made truly remarkable progress since 1993. Within three years after the formation of the Government, Cambodia has become one of the freest countries in the region. A dialogue has been initiated between groups that had stood widely apart: people with totally different experiences and opposing views have until now managed to share positions in a national Government.

135. Through the implementation of the Paris Agreement, the violent political change that characterized Cambodian politics since 1970 has been replaced by a peaceful process of change through dialogue and cooperation and the adoption of a democratic electoral process. The Special Representative believes that this peaceful process of change must continue and be developed and strengthened, as it is vital for the reconstruction of Cambodia.

136. A vivid non-governmental community is developing and contributes to the public discussion. The authorities consult with these groups, in some cases very constructively. The media is active and critical, though some newspapers sometimes fall short of basic ethical and professional standards in their writings. Important pieces of legislation have been passed, even if they do not always conform to international human rights standards. Impressive human rights education is organized for key groups, including the police and the military.

137. However, the situation is fragile. Cambodia is still a poor country suffering from a lack of educated officials and professionals. Attitude changes for a broad recognition of basic democratic principles are necessarily slow, and patience and determination are required. The political scene shows contradictions that could easily paralyse decision-making and government administration. Tendencies toward corruption do exist and remaining Khmer Rouge forces threaten public security. After completing his first mission, the Special Representative would like to emphasize that the United Nations approach to the support for human rights in Cambodia needs to be systematic and long-range in order to allow for a sustainable contribution. Such cooperation should be developed in a spirit of mutual recognition and understanding.

138. The Special Representative hopes to contribute to such a systematic approach by maintaining constructive dialogue with the Government and the people of Cambodia, guiding and coordinating the United nations human rights presence in Cambodia and assisting the Government in the promotion and protection of human rights.

139. Constructive contact was established during the first mission with both the Government and the non-governmental community. Unfortunately, the King was not in the country at the time and the Special Representative looks forward to a future audience with him.

140. Within the United Nations system in Cambodia, responsibility for support programmes for human rights rests primarily with the Cambodia Office of the

Centre for Human Rights. The Special Representative works closely with the Office. The programmes of FAO, ILO, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNV, WFP and WHO also contribute considerably to the promotion of human rights, particularly in the field of economic and social rights. The Special Representative met with staff of these organizations during his mission and intends to do so again on future missions. Although every organization has its own independent programme, there is coordination between them. The Special Representative also consults with the Secretary-General's Representative in Cambodia and intends to keep an ongoing dialogue with the diplomatic representatives in Cambodia.

141. Assistance to the Government will come through direct meetings with its representatives, written communications between the missions and the reports to the General Assembly and the Commission of Human Rights. Draft reports will be shared with the Government before they are finalized: this is also part of the dialogue. However, the Special Representative also believes he has a task in this regard in explaining the human rights situation to the international community and appealing for constructive support when necessary.

Notes

1/ E/CN.4/1994/73 and Add.1, E/CN.4/1995/87 and Add.1 and E/CN.4/1996/93, respectively.

2/ E/CN.4/1996/93.

ANNEX I

Programme of the first official visit of the Special Representative for Human Rights in Cambodia (24 June-6 July 1996)

Monday, 24 June

12.15 p.m. Arrival at Pochentong Airport

7 p.m. Dinner with Mr. Daniel Prémont, Director of the Cambodia Office of the Centre for Human Rights

Tuesday, 25 June

7.30 a.m. Meeting with Mr. Benny Widyono, United Nations Representative of the Secretary-General in Cambodia

9.30 a.m. Briefing by the staff of the Centre for Human Rights

2.30 p.m. Meeting with Mr. Ung Huot, Minister of Foreign Affairs and International Cooperation

3.30 p.m. Meeting with the Ambassadors accredited to Cambodia

5 p.m. Meeting with the Venerable Maha Gossananda on Buddhism and human rights

Wednesday, 26 June: children rights

7.30 a.m. Briefing by the Centre for Human Rights on children rights issues

8.30 a.m. Meeting with the main Cambodian non-governmental organizations working on children rights

2.30 p.m. Meeting with concerned United Nations and international organizations on child trafficking and prostitution

4.30 p.m. Briefing by international non-governmental organizations on landmine issues

7.30 p.m. Dinner with Mrs. Friedrun Medert, Head of the delegation of ICRC

Thursday, 27 June

8.30 a.m. Meeting with the Ambassadors of the European Union and the representative of the European Commission

10.30 a.m. Meeting with the Interministerial Subcommittee on the Convention against Torture

Thursday, 27 June (continued)

12.15 p.m.	Lunch with the Ambassador of the Netherlands, the representative of UNICEF and the Centre for Human Rights on technical cooperation on children rights between the Centre and UNICEF
2 p.m.	Visit of and meeting with the Phnom Penh Municipal Tribunal
3.30 p.m.	Visit of and meeting with the Court of Appeal
5 p.m.	Visit of and meeting with the Supreme Court

Friday, 28 June

8 a.m.	Meeting with Mr. Gildas Le Lidec, Ambassador of France
9.45 a.m.	Meeting with the Interministerial Subcommittee on the Committee on the Elimination of Discrimination against Women
11 a.m.	Meeting with the Centre for Human Rights judicial mentors
2.30 p.m.	Visit of and meeting with the Kandal Provincial Court
4 p.m.	Visit of Ta Khmau/Kandal provincial prison

Saturday, 29 June: non-governmental organizations

8 a.m.	Meeting with Cambodian human rights non-governmental organizations
3.40 p.m.	Departure for Siem Reap
5 p.m.	Briefing by staff of the Centre for Human Rights in Siem Reap
7 p.m.	Meeting with local human rights non-governmental organizations

Sunday, 30 June

8 a.m.	Visit of a demining site in an inhabited zone outside Siem Reap
11.30 a.m.	Meeting with the Khmer National Party provincial representative
2 p.m.	Meeting with the President of the United Front in Siem Reap, and party representatives from Sot Nikhum and Svay Loeu districts

Monday, 1 July

8 a.m.	Meeting with the Siem Reap Tribunal and the Centre for Human Rights judicial mentor in Siem Reap
10 a.m.	Meeting with the Commander of the Gendarmerie

Monday, 1 July (continued)

11 a.m.	Meeting with Cambodian People's Party provincial representative
2.30 p.m.	Meeting with the Governor and First Vice-Governor
5.15 p.m.	Departure for Phnom Penh

Tuesday, 2 July

8 a.m.	Briefing by the Centre for Human Rights
10 a.m.	Meeting with the United Nations Resident Coordinator, the heads of the United Nations agencies, funds and programmes, the European Union, the International Organization for Migration and the International Committee of the Red Cross
12.15 p.m.	Lunch with Mr. Toni Kevin, Ambassador of Australia
2 p.m.	Meeting with Mr. Kem Sokha, Chairman, and Ms. Sam Kanitha and Mr. Sen Slaiman, members of the National Assembly Commission on Human Rights and Reception of Complaints
4.30 p.m.	Audience with Mr. Samdech Hun Sen, Second Prime Minister

Wednesday, 3 July

7.30 a.m.	Briefing on press issues
8 a.m.	Meeting with representatives of the three Cambodian journalists associations and other journalists on freedom of expression and the press and the protection of journalists
12 noon	Lunch hosted by Mr. Wiprecht von Treskow, Ambassador of Germany
7 p.m.	Public meeting and discussion on the concepts, meaning and practice of international human rights protection and promotion

Thursday, 4 July

8 a.m.	Police human rights training by Vigilance
9 a.m.	Meeting with Mr. Uk Vithun, Secretary of State for Justice
12 noon	Lunch with the Ambassadors of ASEAN countries
2.30 p.m.	Meeting with Mr. Paul Reddicliff, Ambassador of the United Kingdom of Great Britain and Northern Ireland
4 p.m.	Audience with Prince Norodom Ranariddh, First Prime Minister

Friday, 5 July

8 a.m.	Meeting with provincial officers of the Centre for Human Rights
3 p.m.	Meeting with Mr. Kenneth Quinn, United States Ambassador
6.30 p.m.	Dinner hosted by Mr. Ung Huot, Minister of Foreign Affairs

Saturday, 6 July

10 a.m.	Press conference for the local press
11 a.m.	Press conference for the international press
2 p.m.	Visit of the Tuol Sleng Genocide Museum
4.45 p.m.	Departure

ANNEX II

Human rights recommendations 1996 (continued)
and follow-up by the Government, if any

25 March 1996: Illegal arrest and deportation of three suspected members of the Free Viet Nam group

Repeated attempts to seek a meeting with the Ministry of Interior did not meet with success. Cambodian nationality was established in two of the three cases. The three members of the group were confirmed detained in Ho Chi Minh City for "investigation".